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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB AMA,

Defendant and Appellant.

B298078

(Los Angeles County
Super. Ct. No. A033363)

APPEAL from an order of the Superior Court of
Los Angeles County, Chet L. Taylor, Judge. Affirmed.

Emry J. Allen, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief
Assistant Attorney General, Susan Sullivan Pithey, Acting
Senior Assistant Attorney General, Michael R. Johnsen and
David W. Williams, Deputy Attorneys General, for Plaintiff and
Respondent.

Appellant Jacob Ama was convicted of first degree murder. (Pen. Code, § 187.)¹ The jury found he “aided and abetted the person who actually fired the gun.” He was sentenced to 26 years to life in prison. This court affirmed the judgment in *People v. Ama* (Jan. 24, 1990, B030972) [nonpub. opn.] (*Ama I*).

Thirty years later, Ama petitioned for resentencing; he requested appointed counsel. (§ 1170.95.) The trial court summarily denied the petition, ruling that Ama is not entitled to relief as a matter of law. The court was correct. The petition shows, *on its face*, that Ama is ineligible for section 1170.95 relief. As a result, he did not require appointed counsel before the court denied his petition. We affirm.

FACTS AND PROCEDURAL HISTORY²

Background

Near midnight on March 9, 1986, police found Ralph Pettis in his home, dead from a gunshot wound to his head from a .22-caliber long rifle bullet. His inebriated wife, Joyce Pettis, was at the home, in blood-smudged clothing. Ray Kelsch drove away as officers approached the Pettis home. A dark gray powdery substance like gunpowder residue was visible around a broken pane of glass, and the victim’s wound bore marks that could be caused by glass. The victim died between 4:30 and 10:30 p.m. that day, based on his liver temperature. (*Ama I, supra*, B030972.)

¹ Unlabeled statutory references are to the Penal Code.

² We take judicial notice of and recite facts from *Ama I*, as did the trial court. (Evid. Code, §§ 452, subd. (d), 459, subd. (a); *In re Luke L.* (1996) 44 Cal.App.4th 670, 674, fn. 3 [judicial notice taken of a prior appeal in the same case].)

A neighbor saw Mrs. Pettis and a Samoan or Black man enter, then leave, the Pettis residence together between 3:00 and 4:00 p.m. on the day of the shooting. Pettis carried shoes and clothing from her house into Kelsch's house, located next door. The neighbor greeted the man with Pettis; a week later, he selected Ama's photograph from a lineup and tentatively identified him as the man he saw. In court, the neighbor said Ama "could have been" the person with Pettis on March 9. On the night of the shooting, another neighbor noticed Pettis and Kelsch together, and saw a man who appeared to be Samoan walking toward her. When he was 12 feet from her, he turned around and walked in the opposite direction. (*Ama I, supra*, B030972.)

Pettis, Kelsch, and Ama were arrested. Ama waived his right to remain silent. In a recorded interview, he told police that Kelsch introduced him to Pettis, who offered him \$1,000 to "snuff" her husband. After quibbling over the price, Ama accepted a \$200 down payment and promised to do the killing. Two days later, Ama's codefendants went to the home of Ama's cousin; they told him they wanted the money back, if Ama was not going to do the job. A week later, codefendants saw Ama and demanded to know when he was going to kill Mr. Pettis. Ama replied that he would do it "when I get ready to" and had "artillery." (*Ama I, supra*, B030972.)

Ama told police he met Pettis at her residence, where she suggested shooting her husband from outside, through a window. During the meeting, Mr. Pettis arrived and an argument ensued. Later, Ama told Kelsch and Pettis he would not do the shooting. Pettis offered Ama more money for a gun; Ama left and returned with a .22-caliber six-shot revolver. Pettis said she would use

anything to kill her husband. Ama thought she was bluffing but believed she was going to pay him more money for bringing her the gun. A week later, Kelsch told Ama that Pettis shot her husband. Ama instructed Kelsch to throw away the gun. (*Ama I, supra*, B030972.)

Police searched the home of Ama's cousin and found an R.G. handgun similar to the one Ama described, loaded with .22-caliber long rifle bullets. It is one of several firearms with rifling characteristics consistent with those found on the bullet that killed the victim. After her arrest, Pettis directed police to a plastic milk jug in her garage containing a watch, a ring, and \$800 in cash. (*Ama I, supra*, B030972.)

Pettis and Kelsch pleaded guilty to second degree murder. (*Ama I, supra*, B030972.) Ama declined the plea bargain, went to trial and was convicted of first degree murder. The jury specially found he aided and abetted the person who actually fired the gun. (*Ibid.*)

This court affirmed. The opinion states, "There was ample evidence of motive, planning and a particular and exacting manner of killing to support a finding of premeditation and deliberation," and the evidence supported the jury's special finding that Ama intended to commit, encourage or facilitate the murder as an aider and abettor. (*Ama I, supra*, B030972.)

The Resentencing Petition

In March 2019, Ama petitioned for resentencing. He declared that he was convicted of murder "pursuant to the felony murder rule or the natural and probable consequences doctrine"; further, due to changes in the law he could not now be convicted because "I was not the actual killer"; "I did not, with the intent to kill, aid, abet, counsel, command, induce, solicit, request, or

assist the actual killer in the commission of murder in the first degree”; “I was not a major participant in the felony or I did not act with reckless indifference to human life during the course of the crime or felony”; and the victim was not a peace officer.

Exhibit A to Ama’s petition is the 1987 judgment of conviction. It states that the jury convicted Ama of first degree murder with a “Special Finding that [Ama] aided and abetted the person who actually fired the gun.”

The court summarily denied the petition, stating that Ama “was convicted of first degree murder and that he, with the intent to kill, aided and abetted the actual killer in the commission of murder.” He agreed to kill his codefendant’s husband, accepted payment to commit the murder, and admittedly procured the weapon and gave it to his codefendant. An eyewitness saw a person matching Ama’s description at the crime scene with Joyce Pettis around the time of the murder. A weapon similar to the one Ama supplied for the murder was recovered at the home of his cousin.

The postjudgment order denying appellant’s petition is appealable. (§ 1237, subd. (b).)

DISCUSSION

The 2018 Murder and Resentencing Laws

In 2018, the Legislature amended state murder statutes and authorized resentencing for past murder convictions. The law changed the felony-murder rule and the natural and probable consequences doctrine. (*People v. Martinez* (2019) 31 Cal.App.5th 719, 723.) Under the new law, persons are liable for murder if they (1) are the actual killer; (2) are not the actual killer but “with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the

commission of murder in the first degree”; or (3) are a major participant and acted with reckless indifference to human life. (§ 189, subd. (e)(1)–(3).)

Resentencing is available if (1) the prosecution proceeded under a felony-murder or a natural and probable consequences theory; (2) the petitioner was convicted at trial or accepted a plea in lieu of trial; and (3) the petitioner could not be convicted of murder because of changes to the murder statutes. (§ 1170.95, subd. (a)(1)–(3).)

The court “shall review the petition and determine if the petitioner has made a prima facie showing that [he] falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.” (§ 1170.95, subd. (c).) We interpret de novo the statutory procedure. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.)

Section 1170.95 creates a multistep process. The court first determines if the petitioner is *eligible* for relief. To conserve judicial resources, the court may examine the record of conviction to determine if the petitioner falls within the provisions of section 1170.95. Next, if ineligibility cannot be determined as a matter of law, the court must appoint counsel, direct the prosecutor to respond to the petition and determine if the petitioner is *entitled* to relief. (*People v. Verdugo* (2020) 44 Cal.App.5th 320, 323, 328–

330 (*Verdugo*), review granted March 18, 2020, S260493; *People v Tarkington* (2020) 49 Cal.App.5th 892, 900–901.)³

Ama’s Petition Proved His Ineligibility for Resentencing

Ama argues that the court was limited to “the four corners of the petition to determine if [it] contained allegations which, if true, would entitle [him] to relief.” The four corners of Ama’s petition—including the 1987 judgment attached as exhibit A—demonstrate ineligibility for resentencing. Exhibit A cites the jury’s special finding that Ama “aided and abetted the person who actually fired the gun.”

Exhibit A shows that Ama could be convicted of first degree murder today, despite the 2018 changes to the murder statutes. The finding that Ama “‘aided and abetted the premeditated murder necessarily included a finding that he, not simply [codefendant], specifically intended to inflict death’ ” even if he was not the shooter. (*Verdugo, supra*, 44 Cal.App.5th at pp. 335–336; § 189, subd. (e)(2).)

Ama marked a box on the petition stating, “I did not, with the intent to kill, aid, abet, counsel . . . or assist the actual killer in the commission of murder in the first degree.” This statement is contradicted by exhibit A. Exhibit A, not the box marked on Ama’s petition, is the best evidence of his conviction. (Evid. Code, § 1530 [a copy of a writing in the custody of a public entity is prima facie evidence of the existence and content of the writing]; *People v. Flores* (2020) 44 Cal.App.5th 985, 990, 993 [petitioner

³ We recognize that the Supreme Court intends to address whether the trial court may consider the record of conviction in determining if a petitioner has made a prima facie showing of eligibility. (*People v. Lewis* (2020) 43 Cal.App.5th 1128, 1137, review granted Mar. 18, 2020, S260598.)

checked a box stating she was convicted of murder but a plea agreement showed a conviction for voluntary manslaughter, which disqualified her for resentencing].)

In sum, Ama's petition proves ineligibility for resentencing as a matter of law. He is disqualified because he was convicted of premeditated first degree murder, as an aider and abettor to the actual killer. (§§ 189, subd. (e)(2), 1170.95, subd. (a)(3).) Because the petition itself, without more, demonstrates ineligibility, the court did not need to appoint counsel, issue an order to show cause or demand a response from the prosecutor. (§ 1170.95, subd. (c); *People v. Torres* (2020) 46 Cal.App.5th 1168, 1178, review granted June 24, 2020, S262011.)⁴ Ama did not meet his initial burden of pleading that section 1170.95 applies to him; therefore, the burden of disproving his petition did not shift to the prosecution. (*Id.*, subd. (d)(3).) It is not reasonably probable he would have obtained a more favorable result had counsel been appointed. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

Citing a statutory provision allowing introduction of new or additional evidence at a hearing on the petition (§ 1170.95, subd. (d)(3)), Ama asserts that appointed counsel could challenge the evidence cited by the trial court. However, Ama is not eligible for relief as a matter of law. He has not stated a prima facie case and is not entitled to counsel under 1170.95, subdivision (c) or under the Constitution. He tries to skirt this rule by challenging the sufficiency of the evidence underlying his conviction, but we already rejected an identical challenge in our prior appellate opinion and that is now law of the case.

⁴ The Supreme Court intends to address when the right to appointed counsel arises under section 1170.95. (*People v. Lewis, supra*, 43 Cal.App.5th 1128, rev.gr.)

The jury found that Ama aided and abetted a willful, deliberate, and premeditated killing. (§ 189.) As stated in *Ama I*, “There was ample evidence of motive, planning and a particular and exacting manner of killing to support a finding of premeditation and deliberation”; the evidence supported the jury’s finding that Ama intended to commit, encourage or facilitate the murder as an aider and abettor; and “[t]he jury was free to disbelieve appellant’s self-serving statement to law enforcement officers that he thought Pettis was ‘bluffing,’ and infer from other circumstantial evidence that he procured the murder weapon knowing of Pettis’ preconceived design to kill her husband, and with the intent to facilitate her commission of that offense.” (*Ama I, supra*, B030972.)

Ama is not entitled to have a court reject the jury conviction and retry the facts, nor is he entitled to a different appellate result. “Public confidence in the integrity of the judicial system is threatened whenever two tribunals render inconsistent verdicts.” (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 347.) Displacing the jury’s 1987 determination of Ama’s culpability as a direct aider and abettor “would undermine public confidence in the judicial system.” (*Ibid.*)

Ama Does Not Have a Constitutional Right to Counsel

The constitutional right to counsel afforded by the Sixth Amendment does not apply here. The right to counsel applies to the trial and initial appeal. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 555.) It also applies if the court vacates the original sentence and resentences the defendant. (*People v. Rouse* (2016) 245 Cal.App.4th 292, 296, 299–301.) It does not apply to a postconviction petition showing that relief is unavailable as a matter of law. (*People v. Shipman* (1965) 62 Cal.2d 226, 232.)

Ama did not make an initial showing of eligibility to trigger his right to counsel. (§ 1170.95, subd. (c).)

Ama's due process rights were not abridged. The court examined his petition, the judgment of conviction, and *Ama I*; it determined that he is ineligible for relief as a matter of law. The court followed a fair and orderly procedure. Because the right to counsel is purely statutory, not constitutionally mandated, there was no due process violation because Ama is ineligible for relief under section 1170.95.

DISPOSITION

The order summarily denying the Penal Code section 1170.95 petition is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.